

2014 -- H 7690

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE - PROCEDURE GENERALLY - LEVY
AND SALE ON EXECUTION

Introduced By: Representative Robert B.Jacquard

Date Introduced: February 27, 2014

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 9-26-4.1 of the General Laws in Chapter 9-26 entitled "Levy and
2 Sale on Execution" is hereby amended to read as follows:

3 **9-26-4.1. Homestead estate exemption.** -- (a) In addition to the property exempt from
4 attachment as set forth in section 9-26-4, an estate of homestead to the extent of five hundred
5 thousand dollars (\$500,000) in the land and buildings, or personal property that the owner uses as
6 a residence, may be acquired pursuant to this section by an owner of a home or an individual who
7 rightfully possesses the premises by lease, as a life tenant, as a beneficiary of a revocable or
8 irrevocable trust or otherwise, and who occupies or intends to occupy the home as his or her
9 principal residence. The estate of homestead provided pursuant to this section shall be automatic
10 by operation of law, and without any requirement or necessity for the filing of a declaration, a
11 statement in a deed, or any other documentation. The estate shall be exempt from the laws of
12 attachment, levy on execution and sale for payment of debts or legacies except in the following
13 cases:

14 (1) Sale for taxes, sewer liens, water liens, lighting district assessments and fire district
15 assessments;

16 (2) For a debt contracted prior to the acquisition of the estate of homestead;

17 (3) For a debt contracted for the purchase of the home;

18 (4) Upon an order issued by the family court to enforce its judgment that a spouse pay a

1 certain amount weekly or otherwise for the support of a spouse or minor children;

2 (5) Where a building or buildings are situated on land not owned by the owner of a
3 homestead estate are attached, levied upon or sold for the ground rent of the lot upon which the
4 building or buildings are situated;

5 (6) for a debt due to, or a lien in favor of, the department of human services and/or the
6 state of Rhode Island for reimbursement of medical assistance, as provided for in section 40-8-15;

7 ~~(7) For a debt heretofore or hereafter owing to a federally insured deposit taking~~
8 ~~institution or a person regulated or licensed under title 19.~~

9 (b) For the purposes of this section, "owner of a home" includes a sole owner, lessee (but
10 only a lessee that was the owner of a home prior to a transfer to the lessor) joint tenant, tenant by
11 the entirety or tenant in common; provided, that only one individual may acquire an estate of
12 homestead in the home for the benefit of his or her family; and provided further, that an estate of
13 homestead may be acquired on only one principal residence for the benefit of a family. For the
14 purposes of this section, "family" includes either a parent and child or children, a husband and
15 wife and their children, if any, or a sole owner. The provisions of this section shall not apply to
16 any debt owing to a regulated institution, a debt secured by a mortgage or other voluntary lien on
17 a home, or a mechanics' lien on the property comprising the estate as provided for under chapter
18 28 of title 34. Notwithstanding any other provisions of law, it shall not be necessary to record a
19 declaration of homestead in order to take advantage of the homestead estate exemption.

20 (c) An estate of homestead shall be subordinate to a mortgage encumbering the home
21 executed by all the owners of the home. For purposes of this chapter, a mortgage shall include an
22 instrument granting a security interest in a manufactured home or cooperative housing unit. The
23 subordination shall not require the signature of a spouse who is not an owner. A mortgage
24 executed by fewer than all of the owners of a home that is subject to an estate of homestead shall
25 be superior only to the homestead estate of the owners who are parties to the mortgage and their
26 non-titled spouses and minor children, if any.

27 No statement that a homestead estate shall be subordinate to the mortgage shall be
28 required in the mortgage instrument and nothing contained in a mortgage or any document
29 executed in connection with the mortgage shall affect or be construed to create, modify or
30 terminate a homestead estate, other than to subordinate it to the mortgage as aforesaid. A
31 mortgage lender shall not require or record a release of homestead in connection with the making
32 and recording of a mortgage.

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1 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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- 1 This act would provide that an estate of homestead shall be subordinate to a mortgage.
2 This act would further provide that nothing contained in a mortgage shall create, modify or
3 terminate a homestead estate other than to subordinate it to the mortgage. This act would also
4 prohibit a mortgage lender from requiring or recording a release of homestead in connection with
5 a mortgage.
6 This act would take effect upon passage.

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